



February 25, 2019

Lisa Fernandez
KTVU Channel 2
2 Jack London Square
Oakland, CA 94607
(510) 874-0139
lisa.fernandez@foxtv.com

Re: Public Records Request – Update

Dear Ms. Fernandez:

Please find the following updates to your requests for public records.

Request #1: *The names and reports of officers involved in police or deputy misconduct, soon to be made public as a result of SB 1421. We are seeking records that date back to Jan. 1, 2017 in our initial request. We would like a prompt return of these records, as required by law. Please include video related to the incident.*

SJPD Response #1: This request was received on January 1, 2019. The department provided you with extension notice dated January 14, 2019. The department provided you with a partial response dated January 25, 2019, which included a record titled Attachment 1_SJPD OIS 2009-YTD 2019.

As you may be aware, there is litigation occurring throughout the state challenging the retroactive application of SB 1421's disclosure requirements for records and information relating to police officer conduct occurring prior to January 1, 2019. Until the legal question of retroactive application of the statute is resolved by the courts, the public interest in accessing these records is clearly outweighed by the public's interest in protecting privacy rights. Therefore, the Department will not disclose any records that pre-date January 1, 2019, at this time, pursuant to Government Code Section 6255.

The department has had one incident of an officer-involved shooting in February 2019. However, this event is currently under investigation by the Santa Clara County District Attorney's Office and the San Jose Police Department. Penal Code 832.7 (b)(7), permits the delay of disclosure of records related to officer-involved shooting incidents that are under investigation. Therefore, these records are not subject to disclosure at this time. An update will be provided to you regarding this incident no later than March 25, 2019.

There are currently no incidents of use of force that resulted in death, or in great bodily injury in January 2019. The information for February 2019 has not yet been determined. Therefore, there are no records responsive to your request at this time.

There are currently no incidents of sustained findings of sexual assault by a peace officer involving a member of the public in the year 2019. Therefore, the department has determined there are no records responsive to your request at this time.

There are currently no incidents of sustained findings of dishonesty by a peace officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by another officer in the year 2019. Therefore, the department has determined there are no records responsive to your request at this time.

Request #2: *As this process can be time-consuming, the second part of our request is asking for records going back to Jan. 1, 2014. We request that "Part 2" of our request be made public considering time restraints. Please include related video.*

KTVU is asking for Part 1 of our request as soon as possible, which we are seeking before a release of Part 2, as we anticipate the latter request will take longer. We are filing this request in anticipation of SB 1421 becoming law on Jan. 1, 2019, when these records must become public. The 10-day period can start then.

We are seeking:

- *Records relating to the report, investigation, or findings of an incident involving the discharge of a firearm at a person by a peace officer or custodial officer.*
- *Records relating to the report, investigation or findings of an incident in which the use of force by a peace officer or custodial officer against a person results in death or great bodily injury.*
- *Records relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public*
- *Records relating to an incident in which a sustained finding of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction of evidence or falsifying or concealing of evidence.*

SJPD Response #2: Please refer to Response #1.

Updated Request dated January 7, 2019: *If it's not too trouble to amend my original request, can you also please:*

- a. *Provide how many complaints from the public about police misconduct regarding the items covered in SB 1421 have you gotten in this time period. (Back to Jan. 1, 2017 first, and then back to Jan. 1, 2014)*
- b. *Provide how many department-initiated internal affairs investigations regarding items covered in SB 1421 have you conducted in this time period?*
- c. *Provide how many claims and lawsuits have you received and settled regarding the items covered in SB 1421 in the same time period?*

SJPD Response to update request:

a. This request was received on January 7, 2019. The department provided you with extension notice dated January 14, 2019. The department provided you with a partial response dated January 25, 2019 and an updated response on January 31, 2019. The department does not have records responsive to this request.

b. This request was received on January 7, 2019. The department provided you with extension notice dated January 14, 2019. The department provided you with a partial response dated January 25, 2019 and an updated response on January 31, 2019. The department does not have records responsive to this request. An alternative record was offered, which included existing Department Initiated Investigation (DII) reports available online.

c. This request was received on January 7, 2019. The department provided you with extension notice dated January 14, 2019. The department provided you with a partial response dated January 25, 2019 and an updated response on January 31, 2019. The department does not have records responsive to this request.

For questions regarding this response, please contact Veronica Morales, Office of the Chief Research and Development Unit at (408) 537-1657 or veronica.morales@sanjoseca.gov. If you would like to appeal this response, please submit your appeal to:

Open Government Manager
City of San Jose, Office of the City Manager
200 East Santa Clara Street
San Jose, CA 95113
PublicRecordsRequest@sanjoseca.gov

Or City of San Jose, Office of the City Clerk
200 East Santa Clara Street
San Jose, CA 95113
cityclerk@sanjoseca.gov

Sincerely,

Edgardo Garcia
Chief of Police

By Veronica Morales
Research and Development Unit

EG:VM